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March 18, 1998

Hon. Magalie Roman Salas  
Secretary  
Federal Communications  
Commission  
445 12th Street, S.W., TWA-325  
Washington, D.C. 20554

Re: In the Matter of Implementation of the Subscriber  
Carrier Selection Changes Provisions of the  
Telecommunications Act of 1996 - Policies and Rules  
Concerning Unauthorized Changes of Consumers Long  
Distance Carriers - Docket No. 94-129

Dear Secretary Salas:

Enclosed is an original and four copies of the Comments  
of the New York Public Service Commission in the above-captioned  
proceeding. In addition, a copy was filed using the Commission's  
Electronic Comment Filing System and copies were sent to all  
parties on the attached service list.

Sincerely,

*Lawrence G. Malone*

Lawrence G. Malone  
General Counsel

Enclosure  
cc: All Parties

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DOCKET FILE COPY ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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Policies and Rules Concerning ) CC Docket No. 94-129  
Unauthorized Changes of Consumers )  
Long Distance Carriers )

COMMENTS OF THE NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE

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Dated: March 18, 1999  
Albany, New York

## TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION AND SUMMARY.....	1
I. The Commission Should (a) Require Unauthorized Carriers to Remit to Authorized Carriers Twice the Amounts Received From Slammed Customers and (b) When the Slammed Customer Has Not Paid Money to the Slammer, Require the Slammer to Reimburse the Authorized Carrier for the Amount it Would Have Received but for the Slammer.....	3
II. Resellers Should Be Required to Obtain Carrier Identification Codes (CICs) or Pseudo CIC Codes.....	4
III. The Independent Third Party Verification System Should Be Limited to Confirming the Carrier Change And Should Include Taping the Verification Calls....	5
IV. Verification Procedures Should Apply to Carrier Changes Made Over the Internet.....	7
V. "Subscriber" Should Be Defined As the "Customer of Record" For Residential Accounts and The "Person in Authority" For Business Accounts.....	8
CONCLUSION.....	9

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COMMENTS OF THE NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION AND SUMMARY

The New York State Department of Public Service (NYDPS) submits these comments in response to the Second Report and Order and Further Notice of Proposed Rulemaking (Second Report and Order and Further Notice) in the above captioned proceeding. The Commission has sought comment on several proposals to further deter unauthorized preferred carrier (PC) changes (commonly called slamming).

We recommend that the Commission should take the following, additional measures to deter slamming.

1. The Commission should double the amount it requires the unauthorized carrier to pay the authorized carrier; and when the slammer has not paid money to the unauthorized carrier, the Commission should require the slammer to reimburse the authorized carrier for the amount it would have received but for the slammer;

2. The Commission should require switchless resellers to obtain CIC codes<sup>1</sup> or pseudo-CIC codes to deter "soft slamming"<sup>2</sup> and preserve the efficacy of PC freezes;<sup>3</sup>
3. Independent third party verification calls should be limited to confirming the carrier change and the verifier should tape the calls;
4. Verification procedures should apply to carrier changes made over the Internet;
5. The Commission should define "subscriber" as the "customer of record" for residential accounts and the "person in authority" for business accounts; and
6. The Commission should authorize a third party administrator to execute PC changes, freezes, and "thaws."

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<sup>1</sup> Carrier identification codes (CICs) are used by local exchange carriers to identify facilities-based inter-exchange carriers. The CIC is also used to allow customers to use carriers other than their presubscribed interexchange carrier (dial around calls).

<sup>2</sup> Switchless resellers use the same CIC as the underlying facilities-based carriers and therefore when a customer is slammed by the reseller ("soft slam") the local exchange carrier may be unable to identify the slamming reseller until after the customer is billed.

<sup>3</sup> A PC freeze prevents unauthorized changes to a customer's preferred carrier and telecommunications services, except with the express written or oral consent of the customer. The lifting of a PC freeze is referred to as a PC "thaw."

- I. The Commission Should (a) Require Unauthorized Carriers to Remit to Authorized Carriers Twice the Amounts Received From Slammed Customers and (b) When the Slammed Customer Has Not Paid Money to the Slammer, Require the Slammer to Reimburse the Authorized Carrier for the Amount it Would Have Received but for the Slammer

The newly adopted slamming rules absolve a customer of liability for slamming charges incurred during the first thirty days and allows authorized carriers to recover from unauthorized carriers any amounts paid by slammed customers. The Commission proposes to strengthen these rules. Specifically, it seeks comment on whether it should allow the authorized carrier to collect double the amount paid by the customer. Where the customer has not paid the unauthorized carrier, the Commission seeks comment on whether to allow the authorized carrier to collect from the unauthorized carrier either (a) the amount the customer was expected to pay the slamming company or (b) the amount that the authorized carrier would have received from the customer, if the unauthorized change had not occurred.

The proposed rules cure a defect in the current rules by enabling a customer, as well as the authorized carrier, to be reimbursed for the illegal carrier change.<sup>4</sup> Providing such

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<sup>4</sup> Moreover, this proposal treats customers who have paid the bill the same way as customer who have not paid the bill. Under the current rules, slammed customers who have paid the unauthorized charges receive only the difference between the unauthorized charge and the authorized charge. This adjustment only occurs if the authorized carrier actually collects the amount paid by the customer from the unauthorized carrier. The proposed rules would enable the authorized carrier to provide a complete refund to the customer who paid the unauthorized carrier while simultaneously retaining an amount equal to the charges the slammed customer paid the unauthorized carrier.

relief to customers victimized by slamming is appropriate and should be adopted.

We also agree that where the customer has not paid the unauthorized carrier, a carrier should recover the amount it would have received from the customer had the slam not occurred. This approach appropriately enables a carrier to recoup lost revenues resulting from slamming but will not result in a windfall to the carrier.

II. Resellers Should be Required to Obtain  
Carrier Identification Codes (CICs)  
or Pseudo CIC Codes

The Commission solicits comment on several options to prevent "soft slamming" and the misidentification of a reseller as the underlying carrier. Specifically, it seeks comment on: (1) whether it should require that resellers obtain CICs; (2) whether it should require that resellers use "pseudo-CICs"; or (3) whether it should require that facilities-based carriers modify their system to prevent unauthorized charges when a subscriber has a PC freeze.

Soft slams must be deterred. The NYDPS has received many complaints from consumers who were unable to get proper information on the carrier that slammed them and why a PC freeze did not work. Any of the three alternatives proposed will make it easier to detect and prevent soft slamming. The Commission should adopt the mechanism that can be quickly implemented in the most cost efficient and technologically feasible manner.

III. The Independent Third Party Verification System  
Should be Limited to Confirming the Carrier Change  
and Should Include Taping the Verification Calls

The Commission solicits comments on several issues with respect to independent third party verification, namely: whether an automated system may be used; whether the carrier's representative can ask the questions while the automated system records the responses ("live scripted" verification); and whether the Commission should require or permit the independent third party to provide information to the subscriber beyond verifying the switch.

The use of an automated verification system may provide some efficiencies. However, to ensure that the customer answers all the questions correctly and intelligibly, the independent verifier will need to record the questions and the subscriber's responses. Reviewing these recordings and following up with those subscribers whose responses are not clear may also be necessary. Therefore, a fully automated system may not actually work.

In the event an automated system is permitted, the customer should, however, have access to a verification operator. For example, if a subscriber cannot follow the prompts of an automated system (or has questions once the automated verification commences), the call should be forwarded to a representative of the verification company to complete the process. Further, if the customer does not want to (or is unable to) complete the verification process, the verifier should end



the call and the transaction should be treated as unverified.

With respect to whether a verification might be considered independent if the carrier's marketer remains on the call during the verification, we believe that the independent third party verification should be separate from the solicitation. The presence of the marketing agent on the call would defeat the purpose of independent verification since the marketer could influence the outcome of the call.

The content of the third party verification should be limited to confirming the carrier change (i.e., that the individual is authorized to make telecommunications decisions, and that the service(s) or carrier the customer is changing is correct). Information should not be provided to a subscriber who did not understand or absorb all of the details of the solicitation. If a subscriber has questions about the carrier change, the verifier should refer the customer to the carrier.

All third party verifications should be recorded. Taped verifications would help determine what service(s) the customer agreed to change or whether the customer was simply seeking information. Without a recording of the conversation, discerning whether the consumer agreed to a switch and, if so, what services the customer agreed to switch is a question of credibility. Over the past three years, NYDPS has received hundreds of slamming complaints where third party verification was used. In many cases, when the alleged slammer was contacted for proof of verification, the only available documentation was a

form prepared by the verifier, indicating that the subscriber had agreed to the asserted change(s). Thus, we urge the Commission to require taping as part of the verification process.

IV. Verification Procedures Should Apply to  
Carrier Changes Made Over the Internet

The Commission seeks comment on how the verification methods should apply to carrier changes placed over the Internet. Specifically, should an Internet application serve as a valid letter of authorization (LOA), absent the required signature?

Requests to change telecommunications services or carriers over the Internet should be subject to applicable state and federal verification requirements. An Internet transmission should not be considered a valid LOA for three reasons. First, it is possible that other people in a household, including minors, may make a carrier change using the Internet without the subscriber's authorization. Secondly, Internet users may inadvertently select a carrier change. We have received complaints that Internet users have clicked on icons to obtain information about a telecommunications service and found that the carrier accessed over the Internet changed their preferred carrier. Finally, allowing carrier changes over the Internet without verification would raise additional security issues. We are aware of at least one case where computer hacking was used to switch the preferred carrier for a number of customers, without the subscriber's authorization. Applying the verification methods would prevent such unauthorized changes.

V. "Subscriber" Should Be Defined As the  
"Customer of Record" For Residential  
Accounts and the "Person in Authority"  
For Business Accounts

The Commission solicits comment on the definition of "subscriber" to determine who should have authority to make a preferred carrier change. The Commission suggests that the party named on the bill should be able to designate additional members of the household to make telecommunications decisions. According to the Commission, this process will promote competition by increasing the number of people in a household to whom carriers can market their services.

With respect to intrastate services, the definition adopted by state commissions should be used. New York recognizes a subscriber (or the person authorized to make telecommunications decisions) as the "customer of record" for residential accounts. For business accounts, we recognize an agent of the business authorized to execute contracts for it as the person authorized to make telecommunications decisions. We believe these definitions (or similar definitions) should be used for interstate services as well.

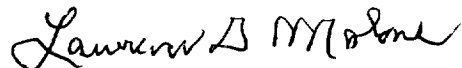
This approach has developed as a result of complaints to the NYDPS where the customer of record had not authorized the person who made a change in service to do so. Although expanding the number of people authorized to change telecommunications services may increase carriers' potential marketing opportunities, it also creates greater opportunity for unauthorized transfers. Therefore, limiting the authority to

make telecommunications decisions to the person financially responsible for the charges is appropriate.<sup>5</sup>

CONCLUSION

For the above reasons, the Commission should adopt the additional measures proposed herein to further deter slamming.

Respectfully submitted,



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<sup>5</sup> If broader authorization is permitted, carrier changes will require greater scrutiny to determine whether a person is actually authorized to make a carrier change. This scrutiny may include additional verification procedures for the soliciting carrier.

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CERTIFICATE OF SERVICE

I, Lucille T. Dillenbeck, hereby certify that an original and four (4) copies of comments in the above-captioned proceeding were sent via Airborne Express to Magalie Roman Salas, Secretary of the Federal Communications Commission. In addition, a copy was filed using the Commission's Electronic Filing System and copies were sent by First Class Mail, postage prepaid, to all parties on the attached service list.



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